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Attorneys for Defendant  
CB Richard Ellis, Inc. incorrectly  
sued herein as CB Ellison

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CORNELIUS LOPES,

**Plaintiff,**

VS.

FREMONT FREEWHEELERS; K&K INSURANCE, USA CYCLING NORHTERN CALIFORNIA AND NEVADA CYCLING ASSOC. (NCNCA), ROBERT PARKER; LAWRENCE UPTHEGROVE; LLOYD RATH; RICHARD BROCKIE, GARY BIRCH, SALLY WILSON, JASON SAGE, TIM O'HARA, JEFF WRONG, JOSEPH DALE WREN C.B.ELLISON, BRYAN SHEPPARD, LARRY NOLAN, STEVE GRUSIS, LARRY ROSA FREMONT FREEWHEELERS RACE TEAM, LIND BUFFETTI, JOE BAUGHMAN AND PETER ALLEN, FFBC RACE TEAM ALAMEDA COUNTY DISTRICT ATTORNEY, NEWARK POLICE DEPT., CASEY CARRINGTON, JIM DAVIS, ALAMEDA COUNTY SHARA MESIC DEPUTY D.A., LISA FARIA DEPUTY D.A. PETAGREW DEPUTY D.A.

#### Defendants.

Case No.: CV 07-6213 JL

DEFENDANT'S REPLY IN SUPPORT OF  
ITS MOTION TO DISMISS PURSUANT  
TO RULE 12(b)(6)

Date: January 30, 2008

Time: 9:30 a.m.

Courtroom: Magistrate-Judge James Larson

1 Plaintiff has submitted an opposition to defendant's motion that does not address the  
2 legal grounds that defendant has asserted for the court to dismiss this action against it. This  
3 defendant has nothing to do with the various claims and complaints that plaintiff has asserted  
4 against the Newark police or other people associated with the police or a court case that  
5 plaintiff was involved in. Plaintiff had simply sued this defendant for injuries arising out of  
6 an accident that occurred on June 12, 2004. This defendant did not even have any connection  
7 with that accident for which reason plaintiff through is attorney at the time dismissed with  
8 prejudice his lawsuit against this defendant for any injuries arising out of that accident.  
9 Moreover, California Code of Civil Procedure §335.1 bars any suit against this defendant for  
10 that accident or for any other claims even under the federal civil rights statute for claims  
11 arising out of that accident. *McDougal v. County of Imperial*, 942 F.2d 668, 674-675 (9<sup>th</sup>  
12 Cir.1991). Therefore, defendant requests the court grant defendant's motion.

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15 Dated: January 15, 2008

Fortune, Drevlow, O'Sullivan & Hudson

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By:



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